



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02646
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2010

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 7, 2008. (Government Exhibit 1.) On July 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) about Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 20, 2009, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on August 28, 2009. This case was assigned to another administrative judge on October 5, 2009. It was reassigned to me on February 2, 2010. DOHA issued a notice of hearing on January 14, 2010, and I convened the hearing as scheduled on February 4, 2010. The Government offered Government Exhibits 1 through 8, which were

received without objection. Applicant testified and submitted Applicant Exhibits A through L, and N through Q, which were also received without objection.<sup>1</sup> The record was left open to allow Applicant to submit additional information. On February 25, February 26, and March 2, 2010, Applicant submitted Applicant Exhibits R through V, which were received without objection. DOHA received the transcript of the hearing on February 17, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 54 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

#### **Guideline F, Financial Considerations**

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits allegations 1.a. through 1.y. in the SOR.<sup>2</sup> Those admissions are deemed findings of fact. He did not admit or deny allegations 1.z. through 1.a.d. Applicant is deemed to have denied those five allegations. He also submitted additional statements supporting his request for a security clearance.

The SOR alleges, Applicant admits, or Government exhibits substantiate, 29 delinquent debts totaling approximately \$39,217. Some of these debts have been due and owing since 2006. (Government Exhibits 3, 4, 5, 6, 7 and 8.)

Applicant testified that his financial problems have been exacerbated over the past few years by his father's death in 2003, followed by his mother's passing in 2007. Both of these events had a financial impact on his ability to pay his past due indebtedness. (Transcript at 50-51.) He has also had to step in to assist his sister in maintaining her living expenses. (Transcript at 79-80.) He no longer has credit cards, so he submits that he will be paying his past due obligations. (Applicant Exhibit U.)

Over the years, Applicant has made several plans to pay off his debts. Each time an intervening event has interfered with him fulfilling the plan. In 2004 and 2008 his plans were stopped by his being laid off from his job. (Transcript at 64-65.) He has been with his current employer since November 2008. He states, "I'm serious about getting rid of debt." (Transcript at 102.) As further described below, Applicant stated that he would make substantial payments within a short period of time after the hearing, and

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<sup>1</sup>There is no Applicant Exhibit M. (Transcript at 36-37.)

<sup>2</sup>Applicant alleges that allegations 1.i., 1.m., 1.s. and 1.v. are duplicate debts.

would provide written proof of his payments, as well as a written budget. No such documents were provided.

As of the day the record closed, the status of the Applicant's debts was as follows:

1.a. Applicant admits this past due medical debt in the amount of \$2,258. He stated that it has not been paid because he is in a dispute with his medical insurer. He further stated he would submit evidence supporting the dispute. Such evidence was not provided. (Transcript at 59-60, 90-91.)

1.b. Applicant admits this past due medical debt in the amount of \$816. He stated that it has not been paid, but would be paid by the end of March 2010. No evidence was submitted showing this debt to be paid. (Transcript at 59-62, 91.)

1.c. Applicant admits this past due debt in the amount of \$1,348. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 91.)

1.d. Applicant admits this past due debt in the amount of \$664. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 91-92.)

1.e. Applicant admits this past due debt in the amount of \$917. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 92.)

1.f. Applicant admits this past due debt in the amount of \$658. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. Applicant also stated that this was a duplicate of the debt in 1.e., but submitted no evidence in support of this point. (Transcript at 57, 92.)

1.g. Applicant admits this past due debt in the amount of \$539. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 57-58, 92-93.)

1.h. Applicant admits this past due debt in the amount of \$49. He testified that this debt had been paid in November 2009, and he would submit evidence to support that fact. He submitted a letter on March 2, 2010, indicating that he had "received substantiation" from the law firm handling this debt. The "substantiation" was not submitted. (Government Exhibit 8; Applicant Exhibit V; Transcript at 61-62, 93.)

1.i. Applicant admits this past due debt in the amount of \$45. He testified that this debt had been paid in November 2009, and he would submit evidence to support that fact. He submitted a letter on March 2, 2010, indicating that he had "received

substantiation” from the law firm handling this debt. The “substantiation” was not submitted. (Government Exhibit 8; Applicant Exhibit V; Transcript at 61-62, 93.)

1.j. Applicant admits this past due debt in the amount of \$87. He testified that he had no knowledge of this debt, owed to a cable television company. Applicant has hired a law firm to help him clear his credit report. He intends to contact the cable company, or have the law firm contact them, to resolve this situation. The most recent credit report in the record, dated February 4, 2010, continues to show this debt as unpaid. (Government Exhibit 8; Applicant Exhibit Q; Transcript at 61-62, 93.)

1.k. Applicant admits this past due debt in the amount of \$410. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 93-94.)

1.l. Applicant admits that he owed this judgment in the amount of \$3,840. He submitted documentary evidence showing that he paid this judgment in October 2009 and received a Release of Lien. (Applicant Exhibit L; Transcript at 45-46, 53-56, 93-96.) This subparagraph is found for the Applicant.

1.m. Applicant admits this allegation, but submits that it is a duplicate of 1.l. The two entries in the credit reports involving these debts have the same case number, and the Applicant has submitted a Release of Lien from the plaintiff, who also states, “You [Applicant] have no further obligation on the . . . account and this matter will be settled and satisfied.” (*Ibid.*) This subparagraph is found for the Applicant.

1.n. Applicant admits this past due debt in the amount of \$535. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 67-69, 96-97.)

1.o. Applicant admits that his account was past due with an automobile credit company in the amount of \$652. He submitted evidence showing that he had made a payment to this company in February 2010. (Transcript at 97-98; Applicant Exhibits T, U.) This subparagraph is found for the Applicant.

1.p. Applicant admits that he owes a past due debt to this creditor in the amount of \$867. He submits that it is a duplicate of another debt in the SOR, but was unable to support this statement. Applicant stated that he would submit evidence to prove this point, but no evidence was provided. (Transcript at 99.)

1.q. Applicant admits owing a past due debt in the amount of \$5,081. He has made a payment arrangement with this creditor to pay \$3,000 to resolve this debt. As of the date of the hearing \$1,500 had been paid. The second payment was to be made February 20, 2010, and the Applicant testified he would submit evidence showing that it had been made. No evidence was provided. (Applicant Exhibit O; Transcript at 47, 72, 99.)

1.r. Applicant admits owing a past due debt in the amount of \$1,216. He has made a payment arrangement with this creditor to pay \$686.80 to resolve this debt. As of the date of the hearing he stated \$300 had been paid. The second payment was to be made February 20, 2010. Applicant testified he would submit evidence showing that both payments had been made. No evidence was provided. (Applicant Exhibit N; Transcript at 46, 72, 99.)

1.s. Applicant admits this debt, but submits that it is a duplicate of 1.r., above. Applicant stated that he would submit evidence to prove this point, but no evidence was provided. (Transcript at 72, 99.)

1.t. Applicant admits that he owes a past due debt to this creditor, but denies that the amount he owes is \$7,732. Rather, he states that he has been making payments and has lowered the amount owed to approximately \$6,000. He stated that he would pay this debt within 60 days of the hearing. (Transcript at 73-100.) No evidence was submitted showing this debt to have been paid.

1.u. Applicant admits this past due debt in the amount of \$933. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 72, 100.)

1.v. Applicant admits that he was several months past due on his mortgage. His mortgage payments have been reduced, and he submitted evidence showing he double-paid his mortgage in February to bring it current. (Applicant Exhibits P, T and U; Transcript at 48-50; 100-101.) This subparagraph is found for the Applicant.

1.w. Applicant admits this past due debt in the amount of \$1,546. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 63,101.)

1.x. Applicant admits this past due debt in the amount of \$109. He testified that this debt had not been paid, but would be paid within 60 days of the hearing. No evidence was submitted showing this debt to be paid. (Transcript at 101.)

1.y. Applicant admits this past due debt in the amount of \$2,096. He testified that this debt had not been paid, and that he believed it to be a duplicate of another debt in the SOR. No evidence was submitted showing this debt to be paid, or that it is a duplicate debt. (Transcript at 101.)

1.z. Applicant is deemed to deny that he owes a past due debt in the amount of \$3,164. This debt is only found in the oldest credit report, dated May 17, 2008. (Government Exhibit 3.) There is no further evidence concerning the current status of this debt. The Government did not meet its burden of showing that the Applicant still owes this debt, and the subparagraph is found for Applicant.

1.a.a. Applicant is deemed to deny that he owes a past due debt in the amount of \$518. This debt is only found in the oldest credit report, dated May 17, 2008. (Government Exhibit 3.) There is no further evidence concerning the current status of this debt. The Government did not meet its burden of showing that the Applicant still owes this debt, and the subparagraph is found for Applicant.

1.a.b. Applicant is deemed to deny that he owes a past due debt in the amount of \$353. This debt is only found in the oldest credit report, dated May 17, 2008. (Government Exhibit 3.) There is no further evidence concerning the current status of this debt. The Government did not meet its burden of showing that the Applicant still owes this debt, and the subparagraph is found for Applicant.

1.a.c. Applicant is deemed to deny that he owes a past due debt in the amount of \$139. This debt is only found in the oldest credit report, dated May 17, 2008. (Government Exhibit 3.) There is no further evidence concerning the current status of this debt. The Government did not meet its burden of showing that the Applicant still owes this debt, and the subparagraph is found for Applicant.

1.a.d. Applicant is deemed to deny that he owes a past due debt in the amount of \$1,019. The records state that this account was “purchased by another lender.” (Government Exhibit 3.) Applicant no longer owes this creditor and the subparagraph is found for Applicant.

## **Mitigation**

Applicant submitted letters of recommendation from several co-workers. (Applicant Exhibits A, B, C, D and E.) He is described as “competent,” a person whose “ethics, conduct and behavior is certainly of the highest value system,” that he “demonstrated high values and good character,” and is “very trustworthy.”

Applicant is a highly respected person in his field. He submitted work-related letters and certificates from his employers, as well as military members and civilian employees of the Defense Department. (Applicant Exhibits F, G, H, I, J and K.)

## **Policies**

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be used in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The

applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has financial difficulties which may affect his ability to safeguard classified information. Applicant, on the other hand, has not successfully mitigated the Government's case, except in part. As set forth above, subparagraphs 1.l., 1.m., 1.o., 1.v., 1.z., 1.a.a., 1.a.b., 1.a.c. and 1.a.d. are found for the Applicant.

## **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by his own admission, and supported by the evidence, continues to have over \$27,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Applicant's financial difficulties arose recently, starting about 2006, and continue to the present. He submitted evidence that he resolved several debts, and those subparagraphs are found for him. However, he did not submit evidence concerning a budget, or supporting his statements that he would make substantial payments within 60 days of the hearing.

Applicant's testimony was often confusing, and he did not have a clear view of his debt situation. He stated that he would submit budget documents showing what he owed, and who he owed it to, but did not do so. He submitted evidence that he had hired a law firm to clear up his credit report, but that is insufficient to show that the underlying debts have been paid.

I have considered all these facts, but find there is a lack of forward movement. A mere statement of intent to pay or resolve his debts in the future is insufficient evidence



to conclude that he has acted responsibly towards his debts. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Applicant's financial situation was impacted by his parents' deaths, and his being out of work for several months over the past few years. However, he failed to show to what extent these incidents affected his ability to pay his debts. This mitigating condition has limited application.

Applicant has initiated a good-faith effort to pay off his creditors. However, there is no track record of his making payments. Accordingly, AG ¶ 20(d) has only limited applicability.<sup>3</sup> Finally, given the fact that he is \$27,000 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. I have

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<sup>3</sup>The Applicant has been unable to complete plans to make payments on debts in the past. For this reason, I have not given him credit for payments he states he has made or shall make, but has not supplied me with documented proof.

also considered the positive references he submitted. Those facts are insufficient to support a finding for the Applicant.

Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. If the Applicant is able to resolve his debt situation successfully, he may be eligible for a security clearance in the future. He is not eligible now.

On balance, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of his request for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST THE APPLICANT
Subparagraph 1.a.:	Against the Applicant
Subparagraph 1.b.:	Against the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d.:	Against the Applicant
Subparagraph 1.e.:	Against the Applicant
Subparagraph 1.f.:	Against the Applicant
Subparagraph 1.g.:	Against the Applicant
Subparagraph 1.h.:	Against the Applicant
Subparagraph 1.i.:	Against the Applicant
Subparagraph 1.j.:	Against the Applicant
Subparagraph 1.k.:	Against the Applicant
Subparagraph 1.l.:	For the Applicant
Subparagraph 1.m.:	For the Applicant
Subparagraph 1.n.:	Against the Applicant
Subparagraph 1.o.:	For the Applicant
Subparagraph 1.p.:	Against the Applicant
Subparagraph 1.q.:	Against the Applicant
Subparagraph 1.r.:	Against the Applicant
Subparagraph 1.s.:	Against the Applicant

Subparagraph 1.t.:	Against the Applicant
Subparagraph 1.u.:	Against the Applicant
Subparagraph 1.v.:	For the Applicant
Subparagraph 1.w.:	Against the Applicant
Subparagraph 1.x.:	Against the Applicant
Subparagraph 1.y.:	Against the Applicant
Subparagraph 1.z.:	For the Applicant
Subparagraph 1.a.a.:	For the Applicant
Subparagraph 1.a.b.:	For the Applicant
Subparagraph 1.a.c.:	For the Applicant
Subparagraph 1.a.d.:	For the Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge